

123 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suede G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

DCP Midstream, LP Docket No. CP08-22-000

Transcontinental Gas Pipe Line Corporation Docket No. CP08-25-000

ORDER GRANTING ABANDONMENT AND
DETERMINING JURISDICTIONAL STATUS OF FACILITIES

(Issued May 30, 2008)

1. On November 13, 2007, Transcontinental Gas Pipe Line Corporation (Transco) filed an application in Docket No. CP08-25-000 seeking authority pursuant to section 7(b) of the Natural Gas Act (NGA)¹ to abandon by sale to DCP Midstream, LP (Midstream) onshore pipeline facilities upstream of Transco's La Gloria Lateral in Jim Wells County, Texas (South Texas Facilities) and to abandon transportation and exchange services utilizing those facilities. On November 13, 2007, Midstream filed a petition in Docket No. CP08-22-000 for a declaratory order finding that the South Texas Facilities, once transferred to Midstream, will perform a gathering function exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA.²

2. For the reasons discussed below, the Commission grants the authorizations requested by Transco and the jurisdictional determination requested by Midstream.

I. Background

3. Transco is an interstate pipeline company with a transmission system which extends from natural gas supply areas in Texas, Louisiana, Mississippi, and the offshore Gulf of Mexico through the States of Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to the termini of Transco's system in the New York City metropolitan area.

¹ 15 U.S.C. § 717f(b).

² 15 U.S.C. § 717(b).

4. Midstream operates non-jurisdictional gas gathering facilities in Arkansas, Colorado, Kansas, Louisiana, Oklahoma, New Mexico, Texas, and Wyoming.

5. Transco and Midstream entered into a purchase and sale agreement for the South Texas Facilities, dated January 31, 2007. The closing of the sale is contingent upon Commission approval of the sale and declaration that the South Texas Facilities will be NGA-exempt gas gathering facilities upon transfer to Midstream.

II. Proposal

A. Transco's Request for Abandonment Authority

6. Transco proposes to abandon by sale to Midstream the South Texas Facilities described in detail in its Exhibit Z to the application and described generally as follows:

1. The South Texas central line extending from milepost 0.00 to milepost 78.89, which consists of 37.63 miles of 10-inch pipeline and 41.26 miles of 14-inch pipeline;
2. The Starr lateral and loop, which consist of 23.17 miles of 10-inch pipeline and 18.7 miles of 20-inch pipeline, respectively;
3. The Carter Ranch lateral, which is comprised of the North Rucias lateral, consisting of 7.9 miles of 8-inch pipeline; the Carter Ranch line, consisting of 1.63 miles of 6-inch pipeline and 0.38 miles of 4-inch pipeline; and the North Rucias line, consisting of 0.72 miles of 6-inch pipeline and 2.23 miles of 4-inch pipeline;
4. The Lacy-Tesoro-Inexco lateral, which consists of 1.94 miles of 6-inch pipeline; and
5. Meter stations, valves, miscellaneous field and tie-in piping, other appurtenances along the above pipeline segments, and related realty and easement rights.

Transco states that its abandonment of the South Texas Facilities will not require any physical removal of facilities, nor have any impact on the daily design capacity or operating conditions on Transco's pipeline system.

7. The South Texas Facilities begin upstream of Transco's lateral between its mainline and Midstream's La Gloria gas processing plant. Therefore, in anticipation of Transco's sale of the South Texas Facilities to Midstream, Transco and Midstream entered into an agreement, dated January 8, 2007, for the construction of a 4.5-mile long, 8-inch diameter pipeline lateral and other facilities to connect the South Texas Facilities to Midstream's La Gloria processing plant.

8. As the result of Transco's proposed transfer of the South Texas Facilities, its remaining downstream facilities will begin at Milepost 78.90 on its 14-inch diameter Main Line A, just upstream of where Main Line A interconnects with its La Gloria Lateral. At the upstream termini of Transco's La Gloria Lateral, Transco will install auxiliary items such as valves, over pressure protection equipment, a new flow computer, a gas chromatograph, communication equipment, and other minor facilities needed to reactivate the receipt point at the tailgate of the La Gloria processing plant.³ Transco will then again be able to receive natural gas volumes at the La Gloria processing plant tailgate and transport the gas via its La Gloria Lateral to its Main Line A.

9. Transco states that as its transportation customers now make purchases at pooling points rather than at the wellhead, the amount of gas supply tendered by its customers to receipt points on the South Texas Facilities is very low. Thus, Transco states that the proposed abandonment will not only allow it to shed facilities that are no longer needed for its primary transmission service function, but will also ultimately result in reduced costs for its customers by the removal of these facilities from its cost of service and rate base.

10. Midstream will purchase the South Texas Facilities for \$12,500,000. Transco states that the proposal will enable Midstream to further develop its non-jurisdictional natural gas gathering system in Texas to provide competitive gathering and gas processing services, as well as greatly expand market access to producers.

11. Transco states that it provided interruptible transportation services to shippers via the South Texas Facilities during the year prior to and including January 31, 2007, which is the date of the purchase and sales agreement between Transco and Midstream. Transco indicated that all but one of these interruptible shippers consent to, or do not oppose, Transco's abandonment of the South Texas Facilities by sale to Midstream.⁴ However, Transco states that the one interruptible shipper that did not consent or state that it was not opposed to the abandonment was in the process of divesting its property.

³ Transco will make the necessary auxiliary installations pursuant to section 2.55(a) of the Commission's regulations. 18 C.F.R. § 2.55(a) (2007).

⁴ Exhibit Z-1 to Transco's application includes letters from BP Energy Company and Samson Offshore Company indicating that they would not intervene or protest Transco's abandonment of the South Texas Facilities. Transco also included consent letters from Cokonos Natural Gas Company; ConocoPhillips Company; Fortis Energy Marketing & Trading GP; Hess Corporation; Petrohawk Energy Corporation; Occidental Energy Marketing Inc.; Sempra Energy Trading Corp.; Sequent Energy Management; Southwest Energy, L.P.; Sunoco Inc. (RM); Total Gas & Power North America, Inc.; Upstream Energy Services, L.P.; and Williams Power Company, Inc.

12. Transco also provides firm transportation service for Sun Company, Inc. (R&M) (Sunoco) through the South Texas Facilities. Transco and Sunoco have agreed to amend their firm service agreement under Rate Schedule FT, as memorialized in their September 28, 2007 letter agreement, to delete two receipt points located on the South Texas Facilities and to reactivate the receipt point at the La Gloria processing plant as of the effective date of the abandonment of the South Texas Facilities to Midstream. Transco will continue to charge Sunoco the same rate and fuel charge for its contract quantity of 40,000 Mcf per day. Transco seeks Commission authorization to amend the service agreement with Sunoco in view of the Commission's June 4, 1992 order approving a settlement agreement which obligates Transco to provide firm transportation service for Sunoco from specified receipt points under Rate Schedule FT for a term of twenty years.⁵

13. Transco and Texas Eastern Transmission, LP (Texas Eastern) are parties to an individually certificated exchange agreement, which involves an exchange point that is on the South Texas Facilities. Transco indicates that no gas flow has been recorded under the agreement since 1992. Transco indicates that it provided written notification to Texas Eastern of its intent to terminate. Transco requests authorization to abandon this exchange agreement.

B. Midstream's Request for Declaratory Order

14. Midstream requests that the Commission issue a declaratory order finding that the South Texas Facilities to be acquired from Transco will perform a gathering function following their transfer to Midstream and, therefore, will be exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA.⁶ Following the acquisition of the South Texas Facilities, Midstream intends to integrate the facilities with its own and affiliated gathering facilities and use the combined facilities to gather raw gas in the region.

15. In addition to an interconnection with Transco, the La Gloria plant has interconnections with Enterprise Intrastate Pipeline Company, L.P., Celanese Corp., Natural Gas Pipeline Company of America, Trunkline Gas Co., LLC, Kinder Morgan Border Pipeline LLC, and Tennessee Gas Pipeline Co.

16. Midstream acknowledges that the Starr lateral, one of the laterals connecting to the central line of the South Texas Facilities, has provided a jurisdictional transmission function heretofore by moving gas from the tailgate of the Enterprise Hydrocarbons, L.P.'s (Enterprise) Delmita processing plant (Enterprise Plant). However, Midstream will

⁵ *Transcontinental Gas Pipe Line Corp.*, 59 FERC ¶ 61,279 (1992).

⁶ 15 U.S.C. § 717(b).

sever the connection between the South Texas Facilities and the Enterprise Plant. Midstream states that customers of Enterprise will nevertheless have several other options for flowing gas from that plant.

17. Midstream asserts that the South Texas Facilities, once integrated with its existing facilities, will enable Midstream to offer enhanced services while generating cost efficiencies.

III. Notice and Interventions

A. Transco (Docket No. CP08-25-000)

18. In Transco's Docket No. CP08-25-000, the Commission issued a notice of the application on November 28, 2007, 72 Fed. Reg. 68,875 (Dec. 6, 2007), requesting the filing of comments by December 19, 2007. Timely motions to intervene were filed by Piedmont Natural Gas Company, Inc. (Piedmont); Independent Petroleum Association of America (IPAA); Exxon Mobil Corporation (ExxonMobil); ConocoPhillips Company (ConocoPhillips); Atmos Energy Corporation (Atmos); Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. (CP&L); PSEG Energy Resources & Trade, LLC (PSEG); subsidiaries of National Grid USA⁷ (National Grid); Crosstex Gulf Coast Marketing Ltd. (Crosstex); Consolidated Edison Company of New York, Inc. jointly with Philadelphia Gas Works (Con Edison and PGW); and New Jersey Natural Gas Company. These timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁸ With its motion to intervene, ExxonMobil also jointly filed a conditional protest. The conditional protest is addressed below.

19. On December 20, 2007, Midstream filed its motion for leave to intervene out-of-time in support of Transco's proposal. The Commission finds that granting Midstream's late-filed motion to intervene in Transco's docket at this early date will not delay, disrupt,

⁷ The National Grid Gas Delivery Companies consist of the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI; Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company (collectively KeySpan Energy Delivery NE); Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA.

⁸ 18 C.F.R. § 385.214(c)(1) (2007).

or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the late-filed motion to intervene.⁹

B. Midstream (Docket No. CP08-22-000)

20. In Midstream's Docket No. CP08-22-000, the Commission issued its notice of the petition for declaratory order on November 28, 2007, 72 Fed. Reg. 68,872 (Dec. 6, 2007), calling for comments by December 19, 2007. Timely motions to intervene were filed by PSEG Energy Resources & Trade, LLC (PSEG); and National Grid USA. These timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹⁰

21. On December 20, 2007, Exxon Mobil Corporation (ExxonMobil) filed a late motion to intervene. On December 28, 2007, the Independent Petroleum Association of America (IPAA) filed a late motion to intervene. The Commission finds that granting ExxonMobil's and IPAA's motions to intervene at this stage of the proceeding will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties.¹¹ Therefore, for good cause shown, the Commission will grant ExxonMobil's and IPAA's motions.

IV. Conditional Protest of ExxonMobil

22. As described above, upon approval of Transco's proposal to abandon the South Texas Facilities by sale to Midstream, Transco will tie off its system so that gas on the South Texas Facilities will no longer be able to flow directly into Transco's downstream Main Line A. However, as noted by ExxonMobil in its conditional protest, at the time Transco filed its application, a new, upstream lateral was under construction that will allow gas to flow from the South Texas Facilities to the La Gloria processing plant.

23. ExxonMobil protests Transco's proposed abandonment absent assurance that following the proposed transfer of facilities to Midstream, customers will be able to transport gas on the South Texas Facilities to the La Gloria processing plant without having to rely also on service from Transco, with resulting rate stacking. ExxonMobil is concerned over the potential for rate stacking if Transco does not transfer all the interconnecting facilities to Midstream, since shippers would be required to pay rates to both Midstream and Transco to reach the La Gloria plant.

⁹ 18 C.F.R. § 385.214(d) (2007).

¹⁰ 18 C.F.R. § 385.214(c)(1) (2007).

¹¹ 18 C.F.R. § 385.214(d) (2007).

24. On January 2, 2008, Transco and Midstream each filed an answer to ExxonMobil's conditional protest. Further, in its April 29, 2008 response to the Commission's staff request for additional information, Transco clarified that the new 4.5-mile long lateral to interconnect the South Texas Facilities with Midstream's La Gloria processing plant is not part of the South Texas Facilities that Transco seeks to abandon in this application; rather, Transco explains, the new lateral was constructed by Midstream, and Midstream owns the lateral.¹² Transco also confirms that the South Texas Facilities to be abandoned by sale to Midstream include all of Transco's facilities upstream of the La Gloria processing plant, including the facilities it constructed under its Part 157 blanket certificate to interconnect the South Texas Facilities with Midstream's new lateral to the La Gloria Plant.

25. On January 10, 2008, ExxonMobil filed an answer to Transco's and Midstream's answers.¹³ ExxonMobil states that its conditional protest should be treated as withdrawn if the Commission concludes that Transco's abandonment application encompasses all of its upstream facilities necessary for shippers' gas to be transported by Midstream to its La Gloria processing plant without using Transco's facilities as well.

26. On May 8, 2008, ExxonMobil filed an answer stating that Transco failed to assert any justification for its April 29, 2008 data response's request for confidential treatment of Exhibits A through D of the January 31, 2007 purchase and sale agreement between Transco and Midstream. ExxonMobil also raises an issue with Transco's indication in response to Data Request 6 that the facilities described in Exhibit Z to its application are not entirely consistent with the facilities description in Exhibit A, Bill of Sale, to the January 31, 2007 purchase and sale agreement. ExxonMobil emphasized that conformance between these two exhibits is important to ensure that all of Transco's facilities upstream of the La Gloria processing plant are actually being transferred to Midstream. However, ExxonMobil acknowledged that the pleadings of both Midstream and Transco state that all of Transco's facilities upstream of the La Gloria processing plant will be abandoned by sale to Midstream. ExxonMobil requested that Transco provide a public version of any revisions necessary to make its descriptions of the facilities being abandoned consistent.

¹² Midstream's new lateral was placed in service on January 1, 2008, and is operated by Midstream pursuant to a permit issued by the Railroad Commission of Texas. Transco's April 29, 2008 Data Response.

¹³ Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest or an answer to an answer, unless otherwise ordered by the decisional authority. We will accept Transco's, Midstream's and ExxonMobil's answers as they have assisted us in the decision-making process.

27. On May 13, 2008, Transco filed a response to ExxonMobil's May 8, 2008 filing. Transco indicated that upon further scrutiny, it determined that the Exhibit A, Bill of Sale, to the January 31, 2007 purchase and sale agreement does not in fact have any errors, but rather merely presents the facilities description in a format different from that in Exhibit Z to its application. Transco's May 13, 2008 pleading also included a complete copy of the Exhibit A, Bill of Sale, to the purchase and sale agreement without the request for confidential treatment so that ExxonMobil could determine for itself that the facilities to be sold to Midstream include all the facilities described in Exhibit Z to Transco's application. Transco reaffirmed that Transco intends to transfer to Midstream all of Transco's facilities upstream of the La Gloria processing plant, thus leaving no potential for Transco to stack an additional rate on top of Midstream's rate for access to the La Gloria processing plant.

28. As discussed above, Transco and Midstream have clarified that Midstream owns the new lateral which will makes it possible for gas on the South Texas Facilities to access the La Gloria processing plant without using Transco's facilities. Further, Transco has provided assurance that it will be transferring all upstream facilities necessary for shippers to use that new lateral to flow gas directly from the South Texas Facilities to the La Gloria processing plant.¹⁴ In view of these considerations, the Commission finds that ExxonMobil's concerns have been adequately addressed. The Commission finds that the existing record provides sufficient assurances that it will not be necessary following the transfer of the South Texas Facilities to Midstream for shippers to also use Transco's facilities to move natural gas to the La Gloria plant for processing. Accordingly, the Commission finds that the basis for ExxonMobil's conditional protest has been mooted.

¹⁴ Exhibit Z to Transco's abandonment application describes the facilities constructed by Transco under its Part 157 blanket certificate to interconnect the South Texas Facilities with Midstream's new lateral as:

Duke Energy Field Services La Gloria Processing Plant Delivery Interconnect near Mainline MP 77.59, Brooks County, TX. Facilities include construct 8-inch yard piping, a dual 6-inch orifice meter skid, electronic flow measurement, chromatograph and radio communications equipment. Transco will reuse two existing 6-inch taps (T750 and T531) on Main Line "A", a meter station (consisting of two 6" orifice meter tubes and 6" yard piping).

V. Discussion

A. Transco's Abandonment Proposal (Docket No. CP08-25-000)

1. Public Convenience and Necessity

29. Because Transco's application pertains to facilities used to transport natural gas in interstate commerce, the requested abandonment is subject to the jurisdiction of the Commission and the requirements of NGA section 7(b). The Commission may permit the abandonment of jurisdictional facilities when the applicant demonstrates that the abandonment is consistent with the public convenience and necessity.

30. The Commission finds that the abandonment is in the public interest. A critical aspect of the Commission's inquiry when approving an abandonment is whether existing customers of the pipeline will be adversely affected.¹⁵ Transco states that Midstream has made arrangements with the existing customers that use the facilities to gather and process their gas without any adverse impact on the rates to be paid by those customers. In its petition for declaratory order, Midstream also states that there will be no rate increases for the existing customers. Further, Sunoco is Transco's only firm customer on the subject facilities, and we are approving Transco's and Sunoco's request for authorization to amend their Rate Schedule FT agreement to change the receipt points provided under the approved 1992 settlement agreement obligating Transco to provide firm transportation service for Sunoco from specified receipt points under Rate Schedule FT for a term of twenty years.¹⁶ The amendment of their Rate Schedule FT service agreement will delete the two receipt points located on the South Texas Facilities being abandoned by Transco and reactivate the receipt point at the tailgate of the La Gloria plant as of the effective date of Transco's abandonment of the South Texas Facilities by sale to Midstream.

31. Transco states that the South Texas Facilities are no longer integral to the provision of interstate transportation service by Transco. Further, Transco and Midstream assert that the proposal will allow Midstream to integrate the South Texas Facilities into its system to provide gas gathering and process services that are not currently available to its customers. Only a relatively small amount of gas supply is tendered by Transco's customers to receipt points on the South Texas Facilities. The abandonment will reduce Transco's operating and maintenance expenses, and potentially capital costs as well.

¹⁵ *Natural Gas Pipeline Company of America*, 95 FERC ¶ 61,317, at 62,092 (2001).

¹⁶ *Transcontinental Gas Pipe Line Corp.*, 59 FERC ¶ 61,279 (1992).

32. The Commission will also approve Transco's abandonment of its service obligation to Texas Eastern under their exchange agreement under Rate Schedule X-4. Transco is ordered to file in accordance with section 154.602 of the Commission's regulations,¹⁷ within 30 days prior to the effective date of abandonment, a notice of termination of the exchange service and cancellation of Rate Schedule X-4 under which the exchange service was individually certificated under Part 157.

2. Accounting

33. In Exhibit Y, Transco proposes to record a \$7,866,541 gain on the abandonment by sale of its facilities to Midstream in Account 421.1, *Gain on Disposition of Property*. Transco proposes to record current income taxes on the tax gain in Account 409.2, *Income Taxes, Other Income and Deductions*, and record the reversal of the related deferred income taxes in Account 411.2, *Provision for Deferred Income Taxes-Credit, Other Income and Deductions*. Transco proposes to treat these facilities as an operating unit or system and clears the sale through Account 102, *Gas Plant Purchased or Sold*.

34. We cannot determine from the information provided whether the proposed journal entries recording the sale comply in all respects with the Commission's Uniform System of Accounts. For instance, Transco has not adequately explained why it is proposing to allocate a portion of the gain to an associate company. Accordingly, we will require Transco to submit its proposed accounting for all aspects of the sale transaction when it files its proposed journal entries to clear the amounts recorded in Account 102 within six months of the date the sale is consummated.¹⁸ The filing should provide a complete explanation of the basis for the proposed accounting with reference to applicable Commission accounting regulations and/or relevant accounting standards of the Financial Accounting Standard Board and be of such detail as to show the complete transaction and all accounts affected, including related income tax accounts.

3. Conclusion

35. As discussed above, ExxonMobil's concerns have been addressed, we are approving Transco's and Sunoco's mutual agreement for amendment of their firm service agreement, Transco's exchange agreement with Texas Eastern has been inactive for some time, and none of Transco's other customers using the South Texas Facilities protest Transco's proposal. Transco's abandonment of these facilities will not adversely affect its ability to meet its certificated service obligations. Further, Midstream states that it

¹⁷ 18 C.F.R. 154.602 (2007).

¹⁸ See 18 C.F.R., Part 201, Account 102(b) ("Within six months from the date of acquisition or sale of property recorded herein, the utility shall file with the Commission the proposed journal entries to clear from this account the amounts recorded herein.").

will not increase the rates being paid by customers currently using the facilities, and there is no evidence that there will be any other adverse impacts on existing customers. Approval of Transco's abandonment of the subject facilities will enable it to realize cost savings which could benefit its customers. In view of these considerations, we find that Transco's abandonment proposal is permitted by the public convenience and necessity.

B. Jurisdictional Status of South Texas Facilities (Docket No. CP08-22-000)

36. The Commission has developed a number of legal tests to determine which facilities are non-jurisdictional gathering facilities and which facilities are jurisdictional transmission facilities.¹⁹ The Commission relies on the modified "primary function test," which includes consideration of several physical and geographic factors, including: (1) the length and diameter of the line, (2) the extension of the facility beyond the central point in the field, (3) the facility's geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. In addition, the Commission also considers the purpose, location, and operation of the facility; the general business activity of the owner of the facility; and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978 (NGPA). The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.²⁰ In addition to the factors enumerated above, the Commission also weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria.²¹

1. Physical Factors

a. The Diameter and Lengths of the Lines

37. The South Texas Facilities here are consistent with other facilities that the Commission has deemed to be gathering in terms of their length and diameter. The total length of the South Texas Facilities is 134.6 miles with the longest line being 37.6 miles. With the exception of one 20-inch diameter line, the pipeline facilities range between 4 and 14 inches in diameter. The total length of pipeline from the upstream southern terminus of the South Texas Facilities to the interconnection with the Midstream's new

¹⁹ *Amerada Hess Corporation*, 52 FERC ¶ 61,268 (1990), and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

²⁰ *Columbia Gas Transmission Corporation*, 93 FERC ¶ 61,278, at 61,913 (2000).

²¹ *Amerada Hess Corporation*, 52 FERC ¶ 61,268 (1990).

lateral to its La Gloria processing plant is approximately 79 miles. These dimensions are consistent with other pipeline facilities the Commission has found to be gathering.²²

b. Location of Compression and the Processing Plants

38. Upon acquisition by Midstream, the South Texas Facilities will deliver only raw, untreated gas for processing to Midstream's La Gloria processing plant. All of the subject South Texas Facilities are located upstream of the La Gloria processing plant, and all of the gas being delivered through the South Texas Facilities will be raw gas to be processed before delivery into interstate or intrastate markets. The subject facilities location upstream of the La Gloria processing plant is consistent with a gathering function.²³

39. Presently, there are no compressor stations on the South Texas Facilities, and Midstream states that it does not foresee a need to add compression to deliver gas for processing. The absence of compression is indicative of a non-jurisdictional gathering function.²⁴ Further, Midstream states that, if compression is added at some point in the future, it will because compression is necessary to move untreated raw gas through its gathering lines to its processing plant.²⁵

c. Location of Wells Along All or Part of the Lines of the Facility and the Geographic Configuration of the Facility

40. The Commission has recognized that there are three basic gathering pipeline configurations: the web-like type; the backbone type; and a short, small diameter pipe

²² *EXCO Resources, Inc., TGG Pipeline, Ltd.*, 119 FERC ¶ 61,121, at P 12 (2007) (finding that the addition of between 52 and 64 miles of pipe to a gathering system including 53 miles of pipe did not render the system jurisdictional); *Straight Creek Gathering, LP*, 117 FERC ¶ 61,005, at P 13 (2006) (finding 60 miles of 20-inch diameter backbone pipeline and several 4- to 12-inch diameter lateral lines extending off the backbone to constitute a non-jurisdictional gathering system).

²³ *Associated Natural Gas, Inc. (Associated)*, 71 FERC ¶ 61,048, at 61,189-90 (1995); and *CenterPoint Energy Gas Transmission Company*, 116 FERC ¶ 61,293, at P 22 (2006).

²⁴ *Mahue Construction Company*, 94 FERC ¶ 61,118, at 61,449 (2001).

²⁵ *Associated*, 71 FERC at 61,189-90 (upstream compression is not inconsistent with a gathering function if the compression is necessary to move gas through a system's gathering lines).

that connects a few wells directly into a transmission system.²⁶ The South Texas Facilities exhibit a backbone, or spine, type configuration, in which various small-diameter lines move gas production to a larger-diameter backbone of the system for delivery to a processing plant. Nine wellhead receipt points are located along the length of the South Texas Facilities' central line in Willacy, Hidalgo, and Brooks Counties. Producer-owned gathering facilities deliver raw gas from wellheads directly into the South Texas Facilities. In addition, two wellhead receipt points are located along the system's North Rucias lateral, and one wellhead receipt point is located along the system's Starr lateral. Midstream states that it anticipates, and is in negotiations to complete, additional wellhead connections with the South Texas Facilities to deliver raw gas to processing facilities.

d. Extension of the Facility Beyond the Central Point in the Field

41. We find that this test is not applicable to the South Texas Facilities.²⁷ The South Texas Facilities are located upstream of Midstream's La Gloria processing plant, within a large production field in the South Texas region and are connected to wells and gathering lines which do not lend themselves to analysis under the central-point-in-the-field test. In this case, the processing plant serves as the central point, and, as discussed above, the downstream location of the processing plant indicates that the upstream South Texas Facilities perform a gathering function.²⁸

e. The Operating Pressure of the Lines

42. As stated above, there is no compression on the South Texas Facilities. Thus, the South Texas Facilities' typical operating pressures of around 800 psig generally are a consequence of the gas reservoir pressures in the production area. A majority of the area wells flow into the line with no compression by producers. The Commission has found that operating pressures of up to 850 psig are consistent with a gathering function.²⁹

²⁶ *Arkla Gathering Services Co.*, 67 FERC ¶ 61,257, at 61,868, *order on reh'g*, 69 FERC ¶ 61,280 (1994).

²⁷ See *Columbia Gas Transmission Corporation*, 79 FERC ¶ 61,045, 61,210 (1997) ("[The central point in the field test] is usually considered in situations where no processing plant is included in the system configuration.").

²⁸ See *Minerals, Inc.*, 69 FERC ¶ 61,184, at 61,774 (1994) ("However, because the subject facilities are located in a production field, the processing plants here generally act as central points in the overall field.").

²⁹ *Williams Natural Gas Co.*, 69 FERC ¶ 61,384 (1994).

2. Other Factors

43. In addition to the primary function test, the Commission also considers relevant non-physical factors such as the purpose, location, and operation of the facilities, the general business activities of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the NGPA.³⁰

a. Purpose, Location, and Operation of the Facilities

44. Midstream operates as a non-jurisdictional gathering company that delivers raw gas from the production field to processing plants. By acquiring the South Texas Facilities, Midstream states that it will be able to modify the facilities to operate them more effectively and economically by combining them with its other existing gathering systems. Accordingly, the Commission finds that the purpose, location, and operation of the South Texas Facilities will be consistent with a gathering function following Midstream's acquisition of the facilities.

b. General Business Activity of the Owner of the Facility

45. The Commission also considers the business activities of the owner in applying the primary function test.³¹ Midstream is not a natural gas company as defined by the NGA and owns no jurisdictional facilities, intrastate pipelines, or local distribution facilities. Midstream gathers raw natural gas via gathering systems located in major natural gas producing areas and processes the gas at processing facilities that it owns or in which it has an equity interest. Midstream does not transport natural gas in interstate commerce or engage in any other NGA-jurisdictional business activities. Upon acquisition of the South Texas Facilities, Midstream will operate the facilities as a part of its non-jurisdictional raw gas gathering and processing activities.

c. Whether the Jurisdictional Determination is Consistent with the Objectives of the NGA and the NGPA

46. When establishing whether a jurisdictional determination is consistent with the objectives of the NGA and the NGPA, the Commission considers improving infrastructure, enhancing competition, and providing additional supplies of gas.³² The

³⁰ *Quicksilver Resources, Inc.*, 122 FERC ¶ 61,115, at P 21 (2008).

³¹ *Bitter Creek Pipelines, LLC*, 94 FERC ¶61,391, at 62,470 (2001) ("In the past we have considered the activities of the owner of facilities as relevant to the question of their jurisdictional status.").

³² See, e.g., *Straight Creek*, 117 FERC ¶ 61,005, at P18; and *Columbia Gas Transmission Corp.*, 116 FERC ¶ 61,191, at P 44 (2006).

South Texas Facilities no longer serve their original purpose of supporting Transco's merchant function nor its unbundled transmission function since adoption of Order No. 636.³³ Further, the applicants assert that the transfer of the South Texas Facilities to Midstream for its gathering and processing operations will allow Midstream to more effectively satisfy market needs.

3. Conclusion

47. Based on analysis of the physical factors, the Commission is satisfied that the South Texas Facilities will perform a gathering function in Midstream's hands. Further, when South Texas Facilities are analyzed individually or as part of the larger configuration under the Modified Primary Function test, it is clear that the facilities to be transferred will perform a non-jurisdictional gathering function in the hands of Midstream. Accordingly, the Commission concludes that it is appropriate to give Midstream the declaratory relief it seeks herein.

VI. Environmental Analysis

48. On December 19, 2007, the Commission staff issued an Environmental Assessment Report in Transco's Docket No. CP08-25-000 and in Midstream's Docket No. CP08-22-000. Transco's sale of facilities to Midstream will involve only minor ground disturbance by Transco to disconnect the abandoned facilities from its remaining system and, as such, Transco's abandonment and Midstream's acquisition of the subject facilities qualifies under section 380.4(a)(31) of the Commission's regulation for categorical exclusion from the need for environmental review.³⁴ Transco's abandonment of services qualifies for the categorical exclusion in section 380.4(a)(29) of the regulations.³⁵

³³ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 Fed. Reg. 13,267 (Apr. 16, 1992), FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, 57 Fed. Reg. 36,128 (Aug. 12, 1992), FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 57 Fed. Reg. 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part sub nom. United Distrib. Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied*, 117 S. Ct. 1723 (1997), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *reh'g denied*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

³⁴ 18 C.F.R. 380.4(a)(31) (2007).

³⁵ 18 C.F.R. 380.4(a)(29) (2007).

49. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements, and exhibits thereto, submitted in support of the authorizations sought herein, and in consideration of the record,

The Commission orders:

(A) Transco is granted permission and approval under section 7(b) of the NGA to abandon, by sale to Midstream, the facilities and services described in this order and in Transco's application, and its services on those facilities, including its exchange service with Texas Eastern using the subject facilities.

(B) Transco is authorized to amend its service agreement with Sunoco under Rate Schedule FT using the subject facilities to be abandoned to delete and reactivate receipt points as described herein and in the application.

(C) Upon acquisition by Midstream, the primary function of the facilities described in this order and in the application will be gathering, and the facilities will be exempt pursuant to NGA section 1(b) from the Commission's jurisdiction and regulation.

(D) ExxonMobil's and IPAA's motions to intervene out-of-time in Midstream's Docket No. CP08-22-000 and Midstream's motion to intervene out-of-time in Transco's Docket No. CP08-25-000 are granted. Midstream's answer in Docket No. CP08-22-000 and Transco's and ExxonMobil's answers in Docket No. CP08-25-000 are accepted.

(E) Transco shall notify the Commission within ten days of the date of its abandonment of the South Texas Facilities and its exchange service with Texas Eastern using those facilities. Within 30 days prior to the effective date of such abandonment, Transco shall file, in accordance with section 154.602 of the Commission's regulations, a notice of termination of the exchange service and cancellation of Rate Schedule X-4 under which the service has been provided.

(F) Transco must submit its proposed final accounting to clear Account 102 with the Commission within six months of the date the sale is consummated. The filing must provide a complete narrative explanation of the proposed accounting and be of such

detail as to show the complete transaction and all accounts affected, including related income tax accounts.

(G) ExxonMobil's conditional protest is dismissed as moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.